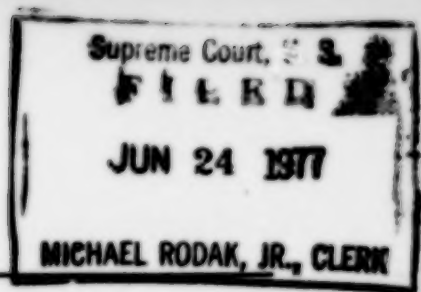


No. 76-1684



IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

SUPER TIRE ENGINEERING COMPANY;

SUPERCAP CORPORATION; and

A. ROBERT SCHAEVITZ,

Petitioners,

vs.

LLOYD W. McCORKLE;

and

TEAMSTERS LOCAL UNION NO. 676,

Respondents.


On Petition For a Writ of Certiorari To The United
States Court of Appeals For The Third Circuit

MEMORANDUM IN LIEU OF BRIEF ON BEHALF OF
TEAMSTERS LOCAL UNION NO. 676, RESPONDENT IN
OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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The questions presented by the employer's Petition for Certiorari are not appropriate for review by this Court under the guidelines set down in Rule 19 of this Court's Rules. One of the "Questions Presented" by the Petitioner does not in fact indicate the real substance of the dispute between the parties in this case. At no time in the lengthy litigation involving the issue of whether striking employees may receive welfare bene-

fits from the State of New Jersey has there been any determination or pronouncement by the State that employees are eligible for welfare benefits "solely from their being on strike" as alleged by Petitioner in its "Questions Presented" portion of the Petition. Rather the eligibility regulations of New Jersey, being attacked by Petitioner-Employer over the last six years of this litigation, are those which provide that simply being "on strike" is not cause to disqualify an individual from being considered for welfare assistance. Mr. Justice Stewart in his dissent when this case was previously before the Court noted that "[f]or one thing, New Jersey does not automatically extend welfare benefits to striking workers; it merely makes them *eligible* to receive such benefits, provided they meet all other appropriate criteria." *Super Tire Engineering Company v. McCorkle*, 418 U.S. 115, 132, n. 4 (1974) (emphasis in original).

It is the Respondent-Union's strongly felt position that this Court in dismissing the appeal of *Kimbell Inc. v. Employment Security Commission of New Mexico*, ___ N.M. ___, Civil No. 10247 (Sup.Ct. N.M., 1975) for lack of a substantial federal question, 429 U.S. 804 (1976) effectively disposed of the issue raised by Petitioner herein involving unemployment compensation for strikers. In reviewing Petitioner's claim on remand from this Court, the Third Circuit followed the doctrine expressed by this Court in *Hicks v. Miranda*, 422 U.S. 332, 334 (1975) in holding that:

We can only conclude that, when the Supreme Court dismissed for want of a substantial federal question in *Kimbell*, the necessary predicate for that dismissal was a determination that federal labor policy did not preclude the payment of unemployment compensation to strikers. That determination controls the labor policy aspect of this case.

Super Tire Engineering Company v. Lloyd W. McCorkle, 350 F. 2d 903, 906 (3d Cir. 1977). These dispositions effectively control the fate of the Petitioner.

Finally, it should be pointed out that this decision of the Court of Appeals for the Third Circuit does not involve a conflict with other courts of appeals nor has the Third Circuit decided the matter in any way in conflict with the applicable decisions of this Court. The federal district court and now the Court of Appeals for the Third Circuit have both taken all necessary action to make a determination "on the merits" in *Super Tire* as mandated by the April 16, 1974 decision of this Honorable Court. It is further suggested that there is no longer existent any important question of federal law not disposed of by this Court in its *Kimbell* decision.

Under all of the facts to be considered by the Court under Rule 19, it is suggested none militate strongly for review in this case. For these reasons it is respectfully requested that the Petition for Certiorari be denied.

Respectfully submitted,
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